HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 862 OF 2006

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Between:

B. Sunanda

……Petitioner

And

The Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Tankbund,

Hyderabad and another

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri T. Rajani Kanth Reddy

representing

Sri C. Raghu

Counsel for the Respondents : Rama Rao. G

Dated: 12-06-2006

Per G.S. SINGHVI, CJ

This petition is directed against notice dated 2-1-2006 issued by the Municipal Corporation of Hyderabad (for short 'the Corporation') under Section 402 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') requiring the petitioner to remove/vacate the encroachment on the footpath.

A perusal of the averments contained in the writ petition which have remained uncontroverted due to non-filing of the counter affidavit shows that vide communication No. 77/TPS/1A/C3/MCH/2000 dated 14-11-2000, the then Commissioner of the Corporation permitted the petitioner to erect a bunk in the open space by the side of the Mother Dairy Farm situated at SBI Colony, Gandhinagar on a temporary basis for 11 months subject to the following conditions:

1. The applicant should pay permit fees/Lease amount/Rent at rate of 100/- per month i.e. Rs.1100/-.
2. The applicant should not mis-use or convert the same for other purpose.
3. The applicant should not cause inderance to the public.

4. The corporation is at liberty to cancel the said permit/Lease and to remove the said bunk at any time.

5. The party shall renew the permit every year."

The permission granted to the petitioner was challenged by the residents of SBI Colony through their welfare association by filing a writ petition under Article 226 of the Constitution of India. The petitioner also filed Writ Petition No. 23006 of 2001 for issue of a direction to the Corporation and its functionaries to renew the lease. The same was disposed of by the learned Single Judge on 9-11-2001 by directing the respondents to consider the petitioner's representation dated 3-9-2001 in accordance with law and pass appropriate order.

The petitioner has averred that despite the direction given by the High Court, the concerned authority of the Corporation did not pass any order on her representation necessitating institution of Writ Petition No.3939 of 2003, which is pending. Her grievance is that without disposing of the writ petition filed by her for renewal of the lease, the Commissioner of the Corporation issued the impugned notice and she is being threatened with dispossession.

We have heard Sri K. Rajani Kanth Reddy, Advocate for the petitioner. In our opinion, the writ petition is liable to be dismissed because,

i. so far the competent authority of the Corporation has not passed order after considering the reply dated 10-01-2006 filed by her in response to the impugned notice. Therefore, the petitioner's grievance cannot but be termed as premature;

ii. in the absence of renewal of lease, the petitioner cannot claim to have a subsisting right to continue to do business in the bunk erected in the open space, and

iii. the petitioner has not produced any material to show that the booth erected by her is not an encroachment on the footpath.

The view taken by us for declining relief to the petitioner is in consonance with the judgment of the Supreme Court in **Seema Arshad Zahera & ors. v. Municipal Corporatioin of Greater Mumbai & ors**.

For the reasons aforestated, the writ petition is dismissed leaving the petitioner free to pursue her cause before the authorities of the Municipal Corporation. However, it is made clear that this liberty shall not be construed as a mandate of the Court to allow the petitioner to continue to occupy public land without semblance of any right.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

12-06-2006

ks/GRR/svs